FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal Nos. 578/2004 & 584/2004
(Mohd. Hussain Mohd. Ismail through Lrs. Vs. Abdul Rashid Sk. Abdulla through Lrs.)

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. G.B. Lohiya, Adv. for the appellants.
Mr. C.A. Joshi, Adv. for the respondents.

CORAM : Smt. Vasanti A. Naik, J.
DATED : 23rd July, 2007.

Heard the learned counsel for the parties.

Since these two second appeals arise out of common judgment passed by the 5th Ad hoc Additional District Judge, Akola, on 6/7/2004, both these second appeals are heard together and are being disposed of by this common order.

Appellants are the legal heirs of Mohd. Hussain Mohd. Ismail who had filed R.C.S. No. 8/1998, where as the respondents are the legal heirs of one Abdul Rashid Sk. Abdulla who had filed R.C.S. No. 104/1997. It was the case of Mohd. Hussain Mohd. Ismail that he had purchased a strip of land admeasuring 137.89 Sq. Mtrs. out of plot bearing No. 2486 by a registered sale deed dated 6/2/1991, from Abdul Rashid Sk. Abdulla. According to Mohd. Hussain Mohd. Ismail, he was handed over possession of the suit property. Defendant-Abdul Rashid Sk. Abdulla denied the claim of the plaintiff. It was the case of defendant-

Abdul Rashid Sk. Abdulla that he had filed a suit against plaintiff-Mohd Hussain Mohd. Ismail for grant of injunction restraining plaintiff-Mohd. Hussain Mohd. Ismail from disturbing the possession of defendant -Abdul Rashid Sk. Abdulla. According to defendant -Abdul Rashid Sk. Abdulla, as a counter blast to his suit for grant of permanent injunction, plaintiff-Mohd. Hussain Mohd. Ismail had instituted the suit for possession. It was the case of defendant- Abdul Rashid that plaintiff-Mohd. Hussain had no right or title over the disputed strip.

The trial Court held that plaintiff-Mohd. Hussain had a title over the disputed strip and was entitled to the relief of possession. Consequently, the suit filed by plaintiff-Mohd. Hussain for possession was decreed and defendant-Abdul Rashid was directed to hand over possession of the disputed strip to plaintiff-Mohd. Hussain, within a period of two months from the date of the decree. The suit filed by defendant Abdul Rashid for permanent injunction was dismissed by the trial Court. In two separate appeals filed by the respondents herein, one against the grant of a decree in favour of the appellants for possession and second against the dismissal of the suit for permanent injunction, the District Judge, Akola, partly allowed both the appeals filed by the respondents herein. The appellate Court held that the appellants were entitled to recover possession of the site marked by letters F.G.I.H. in the map, from the respondents herein. The appellate Court further granted a relief of permanent injunction in

favour of the respondents herein thereby restraining the appellants from interfering with the right, title and possession and enjoyment of strip- open space marked by letters A.E.D.I. in the map. The other reliefs claimed by the parties were, however, rejected by the appellate Court. The appellants herein have challenged the judgment passed by the first appellate Court whereby a part of the claim of the appellants for possession was dismissed. Similarly, it is submitted on behalf of the appellants that the appellate Court was not justified in granting a permanent injunction to the respondents in respect of the property shown by letters A.E.D.I.

It is argued on behalf of the appellants that the maps relied on by the appellants as well as the respondents were not correctly drawn and hence the judgment and decree passed by the first appellate Court was liable to be set aside and the matter is liable to be remanded for getting the property measured, once again, through the T.I.L.R. The counsel for the appellants relied on the decision reported in **(2004) 1 Mh.L.J. 138**. I have perused the judgment passed by the appellate Court. The appellate Court has appreciated voluminous evidence tendered by the respondents on record to hold that the appellants were not entitled to grant of relief in respect of the property marked by letters A.E.D.I. The prayer made on behalf of the appellants for remanding the matter to the trial Court for getting the land measured through T.I.L.R. cannot be accepted as the aforesaid request was not made before the trial Court or even before the appellate

Court, and it is for the first time that the appellants have raised this plea about the incorrectness of the maps produced by the appellants as well as the respondents. Apart from the maps, the Courts have also considered the other evidence to partly allow the appeal filed by the respondents herein. The findings recorded by the first appellate Court are based on a proper appreciation of the evidence on record and call for no interference in this second appeal. The judgment reported in **(2004) 1 Mh. L.J. 138** would not be made applicable to the facts of the instant case. Since no substantial question of law arises for consideration in these two second appeals, the same are dismissed with no order as to costs.

JUDGE

RMP